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Nos. 299 and 329

In the Supreme Court of the United States

OCTOBER TERM, 1942

JERSEY CENTRAL POWER & LIGHT COMPANY,
PETITIONER

v.

FEDERAL POWER COMMISSION

NEW JERSEY POWER & LIGHT COMPANY,
PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION[1]

The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 1113–1134)

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[1] This brief for respondent Federal Power Commission is in opposition to the petitions for writs of certiorari filed in both these cases.

OPINIONS BELOW

is reported in 129 F. (2d) 183. The Determination by the Federal Power Commission is set forth in the record at pp. 936–940.

JURISDICTION

The judgments of the United States Circuit Court of Appeals for the Third Circuit were entered on May 25, 1942 (R. 1135–1136). The petition for a writ of certiorari was filed in No. 299 on August 13, 1942, and in No. 329 on August 22, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Petitioner, New Jersey Power & Light Company is a "public utility" within the meaning of Section 201 (e) of the Federal Power Act. Petitioner Jersey Central Power & Light Company owns and operates transmission facilities in New Jersey which extend to and interconnect with transmission facilities of the Public Service Electric and Gas Company. The transmission facilities of the Public Service Electric and Gas Company in turn extend to the mid-channel of a navigable body of water separating the State of New Jersey from Staten Island, New York, and there interconnect with transmission facilities of Staten Island Edison Corporation which extend to Staten

Island, New York. Jersey Central Power & Light Company sells electric energy to Public Service Electric and Gas Company, which sells electric energy across the state line to Staten Island Edison Corporation. Electric energy generated at the plant of Jersey Central Power & Light Company is transmitted through these interconnected facilities and is consumed in the State of New York. The questions are:

1. Whether petitioner Jersey Central Power & Light Company owns or operates facilities for the transmission of electric energy in interstate commerce within the meaning of Section 201 (b) of the Federal Power Act and is therefore a "public utility" as defined in Section 201 (e) of the Act.

2. If so, whether the common stock of Jersey Central Power & Light Company may be acquired by petitioner New Jersey Power & Light Company, a "public utility," without the authorization of the Federal Power Comission as required by Section 203 (a) of the Act, because such acquisition had been approved by a state regulatory commission.

STATUTE INVOLVED

The relevant portions of the Federal Power Act of 1935 are set forth in the Appendix, *infra*, pp. 20–23.

STATEMENT

On June 7, 1938, the Federal Power Commission issued an order (R. 1-2) directing petitioner

New Jersey Power & Light Company (hereafter called Jersey Power) to submit in writing under oath detailed information concerning its acquisition of 341,350 shares of common stock of petitioner Jersey Central Power & Light Company (hereafter called Jersey Central) in apparent violation of Section 203 (a) of the Federal Power Act and to show cause, if any, why the Commission should not proceed to enforce the provisions of the Federal Power Act. In its answer (R. 3–8) Jersey Power admitted the acquisition of the stock, but alleged that the stock was acquired with the approval of the Board of Public Utility Commissioners of the State of New Jersey, and denied the applicability of Section 203 (a) on the ground that Jersey Central was not a "public utility" within the meaning of the Act since it did not own or operate any facilities for the transmission or sale of electric energy in interstate commerce. On July 5, 1938, the Commission issued an order instituting an investigation and setting a date for a hearing (R. 9–11). On September 27, 1938, Jersey Central was permitted to intervene (R. 19). Following a hearing, the Commission made findings of fact and concluded (R. 936–940) that Jersey Central was a "public utility" within the meaning of the Federal Power Act, that the acquisition of the stock was the "acquisition by a public utility of the securities of another public utility within the meaning of Section 203 (a) of the Federal Power Act";

and that Jersey Power had acquired such securities in violation of Section 203 (a) of the Act since it had not obtained prior authorization from the Commission (R. 940). Petitions for rehearing (R. 941–962) were denied on September 15, 1939 (R. 963–964). On petitions to the court below for review (R. 1094–1112), the determination of the Commission was affirmed on May 25, 1942 (R. 1113–1134).

The facts relating to the enterprises in controversy may be summarized as follows:

Jersey Power and Jersey Central own and operate electric utility systems in the State of New Jersey (R. 1114). Jersey Power is admittedly a "public utility" within the meaning of Section 201 (e) of the Federal Power Act (R. 3, 940, 1114.)[2] Jersey Central owns and operates transmission facilities extending from its substation adjacent to its generating plant in South Amboy, New Jersey, to the south bank of the Raritan River where such transmission facilities are joined to the transmission facilities of Public

[2] Jersey Central, Jersey Power, and Public Service Electric and Gas Company serve two-thirds of the State of New Jersey, and operate in synchronism or parallel (R. 966). In addition, these three utilities are interconnected and operate in synchronism with numerous other electric utilities in the States of New York, Pennsylvania, Delaware, and Maryland (R. 86). Electric utilities, when interconnected, must operate in parallel or synchronism which means that the electrical ties between each and every generator in such an interconnected system is as definite and real as though they were mechanically interconnected by shafting and gears (R. 86–87).

Service Electric and Gas Company (hereafter called Public Service) (R. 937–938). The transmission facilities of Public Service, in turn, extend from the south bank of the Raritan River to its Mechanic Street substation in Perth Amboy, New Jersey (R. 938). Public Service also owns transmission facilities extending from its Mechanic Street substation to the midchannel of Kill van Kull, a navigable body of water separating the State of New Jersey from Staten Island, New York. At midchannel, Public Service's transmission facilities are interconnected with the transmission facilities of the Staten Island Edison Corporation (hereafter called Staten Island) whose facilities extend from such point of connection to its Atlantic substation on Staten Island, New York (R. 938). The bus bar at Public Service's Mechanic Street substation serves as the common point of connection for the three utilities. The transmission facilities between Jersey Central and Public Service, on the one hand, and the transmission facilities from Public service to Staten Island are attached to this same bus bar (R. 938–939).[1]

The Commission found that the facilities of Jersey Central and Public Service are utilized in the daily transmission of electric energy in both

[1] A bus conductor, or a group of conductors, is a switchgear assembly which serves as a common connection for three or more circuits. *American Standard Definitions of Electrical Terms*, published by American Institute of Electrical Engineers, p. 97.

directions between the Mechanic Street substation of Public Service and Jersey Central at South Amboy, and are connected directly and at all times with the common bus bar at the Mechanic Street substation (R. 938–939); and that normally electric energy is transmitted daily in both directions between Public Service's Mechanic Street substation in New Jersey and Staten Island's Atlantic substation in New York (R. 938–939). The Commission found further that the transmission facilities described provide a direct and interconnected line for the transmission of electric energy between Jersey Central's substation at South Amboy, New Jersey, and Staten Island's Atlantic substation in New York and that "on numerous occasions during certain days and almost daily throughout 1936, 1937, and to September 1938" electric energy was transmitted over these facilities between such points (R. 939).

The relationship between Jersey Central and Public Service is governed by a written and an oral contract. The written contract, designated as "Interconnection Agreement," provides for the interchange of electric energy and the maintenance of the facilities between South Amboy and the Mechanic Street substation (R. 1939–1050). Although this contract provides primarily for the transfer of emergency power to be supplied in the "event of breakdown of equipment, unusual load demands, or other unusual or abnormal conditions in the system of either party * * *" it

also provides that the facilities may be used, by mutual agreement of the parties, for purposes other than those specifically provided in the contract (R. 1042). Accordingly, the facilities are used extensively, pursuant to oral arrangement, for the transfer of electric energy designated as "economy-flow" energy.[4] During the period January 1, 1937, to March 31, 1938, more than 65,000,000 kilowatt-hours of electric energy were sold and transmitted under this oral contract by Jersey Central to Public Service (R. 1019).[5] The actual interchange of electric energy, expressed in kilowatt-hours (KWH), for the years 1934–1937 was (R. 978):[6]

	1934	1935	1936	1937
From Jersey Central to Public Service	56,345,000	77,333,196	70,694,825	55,421,000
From Public Service to Jersey Central	1,554,020	969,776	1,240,545	1,631,160

[4] All energy is the same; the name "economy flow" merely denotes attendant circumstances of supply and price (R. 238–240, 259, 263–264, 328–329).

[5] Public Service relies upon Jersey Central energy in its day to day operations (R. 99, 1019–1035). The manner in which these interconnected utilities operate and are interdependent upon one another in their joint or pool operations is established by the 1937 annual report of Public Service to the Federal Power Commission. This report shows that the 1987 annual system peak load of Public Service amounting to 551,900 kilowatts was supplied as follows: 471,000 kilowatts by Public Service Power plants, 32,000 kilowatts by Philadelphia Electric, 33,000 kilowatts by Pennsylvania Power and Light, 9,000 kilowatts by Jersey Central from its South Amboy plant, 2,000 kilowatts by Staten Island, and 5,000 kilowatts by other utilities (R. 97–98).

[6] Public Service paid Jersey Central for the electric energy which it received during 1937 the gross sum of $145,789.00 (R. 333).

Electric energy was, in turn, interchanged between Staten Island and Public Service pursuant to contract (R. 1068–1069). The interconnection and exchange between Public Service and Staten Island was vital to Staten Island (R. 397–401, 401–402, 407–409) and the proximity of the Jersey Central interconnection made the Staten Island interconnection with Public Service more dependable (R. 402).[7] Although the interchange of energy between Public Service and Staten Island nearly balanced each year, the energy "in" and the energy "out" of Staten Island are separate transactions (R. 362, 418, 429) and the energy is paid for partly in kind (R. 1013–1017) and partly in cash (R. 1074). For the years 1934–1937 the interchange expressed in kilowatt-hours was (R. 978):

	1934	1935	1936	1937
From Public Service to Staten Island	3,826,100	3,453,500	3,266,600	3,090,400
From Staten Island to Public Service	3,033,800	3,147,300	3,111,400	3,119,200

Log sheets are maintained at Public Service's Mechanic Street substation showing the interchange of power over the circuits to Jersey Central and to Staten Island. Readings of all meters at the Mechanic Street substation are taken every half-hour from 6 A. M. until midnight and hourly from midnight to 6 A. M., and are regularly

[7] The importance of an interconnection is not measured by the extent of use; dependability under all circumstances is the critical factor (R. 314–315).

recorded on the station log sheets (R. 1118–1119). Commission experts, on the basis of an analysis of 184 representative readings for various hours of the day and various times of the year, determined that simultaneously with the inflow of energy from petitioner Jersey Central to the Mechanic Street substation there was an outflow of energy to Staten Island (Comm'n's Exhs. 11, 12, R. 983–1001). These readings represent energy transactions during 131 days between January 1, 1937, and September 6, 1938 (R. 992–1001, 1119). They show that the total power transmitted by Jersey Central to Public Service's Mechanic Street substation exceeded the total local requirements of Public Service, as registered at the substation; accordingly the excess, originating from petitioner Jersey Central, was shown necessarily to have been transmitted to Staten Island. Of the 184 readings, 24, picked at random (R. 123), were further analyzed. This analysis established the percentage of energy supplied to Staten Island which originated on the Jersey Central system (Comm'n's Exh. 16 A, R. 1004) and showed that electricity generated by Jersey Central was flowing out over all bus-bar connections at Mechanic Street substation except the connection with Jersey Central from which current was flowing into the substation (R. 118, 120–122, 124–125). As a consequence the Commission found that there was no electricity coming into the bus-bar on these oc-

casions except from Jersey Central (R. 1114).[8] Detailed study of the 24 readings demonstrated that at practically all times shown by the 184 readings Jersey Central was supplying all the energy transmitted from Public Service to Staten Island and that if there was any instance when Jersey Central was not supplying all such energy to Staten Island it was at least supplying a substantial part of such energy (R. 108, 112, 122, 125–126, 992–1001).

Similarly Commission experts studied various readings at Mechanic Street substation on 38 different days between January 13, 1937, and August 12, 1938 (R. 1005–1011). These studies demonstrated that the interconnected pool operations of Staten Island, Public Service and Jersey Central resulted at times in the transmission of electric energy generated by Staten Island in the State of New York through Public Service to Jersey Central where such energy was consumed in the State of New Jersey (R. 130–133). This transmission of electric energy in the reverse direction followed the same pathway as Jersey Central generated energy transmitted to Staten Island (R. 133).

[8] As to five periods examined it appeared that the flow of electricity to Public Service on the bus-bar from Jersey Central exceeded the requirements of the Central Division of Public Service, the load required to maintain Staten Island and all local requirements of the substation (R. 1119).

ARGUMENT

The court below held that petitioner Jersey Central owned and operated facilities for the transmission of electric energy in interstate commerce, that consequently Jersey Central was a "public utility" within the meaning of Section 201 (e) of the Federal Power Act (R. 1133–1134) and that the acquisition of the Jersey Central stock by another "public utility" (Jersey Power) was subject to the jurisdiction of the Federal Power Commission under Section 203 (a) of the Act even though such acquisition had been approved by the Board of Public Utility Commissioners of the State of New Jersey (R. 1134). This decision is correct and presents no conflict with other decisions.

1. Section 203 (a) of the Act prohibits a public utility's acquisition of any security of any other public utility without prior authorization of the Commission. Section 201 (e) defines the term "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission * * *." By Section 201 (b), the provisions of the Act are made applicable to the transmission and sale at wholesale of electric energy in interstate commerce and, in addition, the Commission is vested with "jurisdiction over all facilities for such transmission or sale of electric energy * * *." And Section 201 (c) provides that "electric energy shall be held to be transmitted in interstate commerce if transmitted

from a State and consumed at any point outside thereof."

The Commission found (R. 939–940) that petitioner Jersey Central owns and operates "transmission facilties utilized for the transmission of electric energy in interstate commerce." This finding is plainly supported by the evidence which we have summarized in the Statement (*supra*, pp. 5–11): That evidence establishes that Jersey Central is an integral link for the transmission of energy which finds its way directly and uninterruptedly to Staten Island, New York, through the interconnected facilities of Public Service.* The finding, thus clearly supported and affirmed by the court below (R. 1133–1134) is conclusive. See Section 313 (b); *General Pictures Co.* v. *Western Electric Co.*, 304 U. S. 175, 178; *United States* v. *Chemical Foundation*, 272 U. S. 1, 14; *Virginian Ry.* v.

* Petitioners' contention (Pet. No. 299, pp. 30–32; Pet. No. 329, pp. 21–27) that Jersey Central does not own or operate facilities for the transmission of electric energy across State lines because it sells directly to Public Service within the State of New Jersey is without substance. Cf. *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 440; *United States* v. *Rock Royal Co-operative*, 307 U. S. 533, 568–569; *Peoples Natural Gas Co.* v. *Federal Power Commission*, 127 F. (2d) 153, 157–158, certiorari denied, No. 1234, last Term, June 1, 1942. It is conceded by petitioners (Pet. No. 299, pp. 5, 6; Pet. No. 329, pp. 7, 9–10) that the energy which Jersey Central generates and transmits through Public Service in New Jersey is consumed in the State of New York (see Section 201 (c)). And it is of course immaterial where title to the energy passes. *Public Utilities Commission* v. *Attleboro Co.*, 273 U. S. 83; *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298.

Federation, 300 U. S. 515, 542. The provision of Section 201 (b) that the Commission "shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used * * * only for the transmission of electric energy in intrastate commerce" does not bring Jersey Central outside the broad definition of the term "public utility" set forth, for the transmission facilities here involved are not used "only" for transmission in intrastate commerce. Section 201 (b) specifically provides that the Commission shall have jurisdiction over *all* facilities for the transmission of electric energy in interstate commerce and it is not necessary that such facilities be used *exclusively* for such interstate transmission. And while the Commission under Section 201 (b) may not have jurisdiction over the generation, distribution, and exclusively intrastate transmission facilities of a "public utility" except as specifically provided in the Act, any person who owns or operates facilities for interstate transmission of electric energy is, under Section 201 (e), a "public utility" subject to the jurisdiction of the Commission.[10] Petitioners' contention to the contrary

[10] Petitioners' attempted distinction (Pet. No. 299, p. 5; Pet. No. 329, pp. 8–9) between "economy-flow," "emergency," and "slop-over" energy is, as the court below found (R. 1116), immaterial, since the Act deals with "electric energy." Moreover, the transmission of electric energy is instantaneous and Jersey Central's ability to generate can only exist coincident with Staten Island's consumption, to the extent that Jersey Central energy is transmitted to and consumed by the

(Pet. No. 329, p. 19; Pet. No. 299, pp. 21–22), that the admixture of intrastate transmission with interstate transmission over the same facilities deprives the Commission of jurisdiction over such facilities and over the interstate transmission for which they are used, would emasculate the Act and is clearly erroneous. Cf. *United States* v. *American Trucking Associations*, 310 U. S. 534, 544; *United States* v. *Dickerson*, 310 U. S. 554, 561–562.

2. Petitioners contend that even if Jersey Central is a public utility within the meaning of Section 201 (e), the Commission's approval of the stock acquisition by Jersey Power is not required under Section 203 (a) because the acquisition had been approved by the Board of Public Utility Commissioners of the State of New Jersey. Petitioners assert (Pet. No. 299, p. 34; Pet. No. 329, pp. 30–34) that "the existence of State regulation necessarily excludes federal regulation" under the

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latter (R. 311). Thus in the transmission of electric energy, unlike the transportation of freight by railroads and ships, the destination of the energy is necessarily fixed at the instant of production. The alleged absence of knowledge or concern on the part of Jersey Central (Pet. No. 329, pp. 10, 25) is immaterial because "Once the circuit between the Jersey Central generating plant and the Staten Island Company was closed, inevitably electricity flowed from Jersey Central to the Staten Island Company. That result was not only not unexpected, it was unavoidable" (R. 1133). Moreover, the assertion that the interstate movement of Jersey Central energy is a mere accident (Pet. No. 329, pp. 8–9) is erroneous, since it is a vital part of the carefully planned interstate pool (R. 99; see *supra*, pp. 5, 8).

Act because Section 201 (a) provides that federal regulation is "to extend only to those matters which are not subject to regulation by the States." The contention is without merit. Section 201 (a) is, as the court below recognized (R. 1127), merely a declaration of policy (S. Rep. No. 621, 74th Cong., 1st Sess., p. 19; H. Rep. No. 1318, 74th Cong., 1st Sess., p. 26; H. Rep. No. 1903, 74th Cong., 1st Sess., p. 74), and its provisions are not "enactments of law, but legislative averments by way of inducement to the enactment that follows." *Carter* v. *Carter Coal Company*, 298 U. S. 238, 280; *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 30. As the Act clearly shows, Congress did not intend this limitation to be read into the other sections of the Act, since any specific limitation on the Commission's jurisdiction, where intended, was "inserted in each section to prevent the expansion of Federal authority over State matters." S. Rep. No. 621, 74th Cong., 1st Sess., p. 18. And where Congress intended to limit federal regulation to situations where state regulation was absent, it expressed its intent specifically in the appropriate provision. For example, the provisions of Sections 204 (a)–(e) requiring Commission approval of the issuance of securities and the assumption of liabilities by public utilities are specifically limited by Section 204 (f)

which provides that the "provisions of this section shall not extend to a public utility organized and operating in a state under the laws of which its security issues are regulated by a state commission." If, as petitioners contend, the declaration of policy in Section 201 (a) precludes federal regulation of any matters subject to state regulation, the provision of Section 204 (f) is meaningless and a nullity. Cf. *Platt* v. *Union Pacific Railroad Company*, 99 U. S. 48, 58–59. And plainly the Act contemplates that, in respect of certain matters such as the stock acquisition here involved, federal and state regulation may continue side by side, and that federal regulation is not withdrawn in every instance where state regulation exists."

Nor does the requirement of approval by the Federal Power Commission of the acquisition of securities produce a "conflict," as petitioners contend, between state and federal regulation in these circumstances. The Commission is not authorized by Section 203 (a) to require any affirmative action by order in respect of security acquisition. Its approval is permissive rather than manda-

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" Thus, the Act provides for notice to state commissions (Sections 202 (b), 203 (a), 207, 302 (b)), for joint hearings with state commissions (Sec. 209 (a)), and for conferences with state commissions regarding "public utilities subject to the jurisdiction of such State commissions and of the Commission" (Section 209 (b)).

tory.[12] In certain sections of the Act the Commission is authorized to issue mandatory affirmative orders which might create possible conflicts with the requirements prescribed under state authority. Where Congress intended to preserve such state authority in those instances, it expressly did so. Thus, in Section 301 (a), which authorizes the Commission to prescribe a system of accounts for all "public utilities" and to "determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited," it is specifically provided that nothing in the Act shall relieve any public utility from keeping any accounts which it "may be required to keep by or under authority of the laws of any state." *Cf. Northern States Power Company* v. *Federal Power Commission*, 118 F. (2d) 141, 144 (C. C. A. 7); *Northwestern Electric Company* v. *Federal Power Commission*, 125 F. (2d) 882, 885 (C. C. A. 9). No such provision is necessary in the case of stock acquisition under Section 203 (a).

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[12] The Regulations of the Commission require that a petition under Section 203 (a) show whether or not an application is required to be filed with any other State or Federal authority, and, if so, the filing of a copy of the application and order relating thereto. Federal Power Commission, Rules of Practice and Regulations, Part 33, Sec. 33.2, Par. O; Part 33, Sec. 33.2, Exh. K.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petitions for writs of certiorari be denied.

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APPENDIX

Section 201 of the Federal Power Act of 1935, 49 Stat. 847 (16 U. S. C. sec. 824) provides as follows:

SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary to the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the

transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

Section 203 (a) of the Federal Power Act of 1935, 49 Stat. 849 (16 U. S. C. sec. 824b (a)) provides as follows:

SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part

thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

Section 301 (a) of the Federal Power Act of 1935, 49 Stat. 854, (16 U. S. C. sec. 825) provides as follows:

SEC. 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any

State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

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